

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MICHAEL J. BARNETT, M.D.,            )  
                                  Plaintiff            )  
  )  
                                  v.                    ) CIVIL ACTION NO. 04-30001-MAP  
  )  
EAST CAROLINA NEUROLOGY, INC., )  
                                  Defendant            )

MEMORANDUM AND ORDER REGARDING  
DEFENDANT'S MOTION TO DISMISS FOR  
LACK OF PERSONAL JURISDICTION OR,  
ALTERNATIVELY, MOTION TO TRANSFER  
(Docket No. 5)

April 28, 2004

PONSOR, U.S.D.J.

Michael J. Barnett, M.D., a Massachusetts resident, has filed a five-count complaint against his former employer, East Carolina Neurology, Inc., ("ECN"), a North Carolina company. ECN has filed a motion to dismiss on the ground that it lacks sufficient contacts with Massachusetts to support exercise of personal jurisdiction. Alternatively, ECN seeks transfer of this case to the Eastern District of North Carolina, Greenville Division, pursuant to 28 U.S.C. § 1404(a).

Since the court will order transfer of the case pursuant to § 1404(a), it is unnecessary to address the motion to dismiss, which is hereby DENIED, as moot.

For the reasons stated in open court following oral argument, transfer to the Eastern District of North Carolina, in the language of § 1404(a), "for the convenience of the parties and witnesses," and "in the interest of justice," is appropriate. Plaintiff himself is the only potential witness residing in

Massachusetts. At least ten other potential trial witnesses associated with the defendant live in North Carolina. In addition, virtually all of the documentary evidence is in North Carolina, the contract was drafted in North Carolina subject to North Carolina law, and plaintiff showed himself willing and able to travel to North Carolina during the time he was employed by ECN. Manifestly, the balance of factors favoring adjudication in the Eastern District of North Carolina substantially outweighs any factor favoring a Massachusetts forum.

For the foregoing reasons, defendant's Motion to Transfer is hereby ALLOWED, but on the condition that any deposition of the plaintiff take place in Massachusetts. As noted, defendant's Motion to Dismiss is DENIED, as moot. The clerk is hereby ordered to transfer this file to the United States District Court for the Eastern District of North Carolina, Greenville Division.

It is So Ordered.

/s/ Michael A. Ponsor  
MICHAEL A. PONSOR  
U. S. District Judge